

NTSB Order No. EA-4336

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 21st day of March, 1995

Docket 216-EAJA-SE-13657

Applicant has appealed from an order served by Administrative Law Judge William R. Mullins on October 4, 1994, dismissing applicant's application for \$61,357.51 in attorney fees and expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, because of applicant's failure to meet the eligibility requirements of that Act pertaining to net worth.<sup>1</sup>

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As discussed below, applicant's appeal is denied and the order of dismissal is affirmed.

Applicant prevailed over the Administrator in an enforcement action decided by the full Board. Administrator v. Richard, NTSB Order No. EA-4223 (1994).<sup>2</sup> He subsequently applied for attorney fees and expenses pursuant to the EAJA, admitting in his EAJA application that he has a net worth in excess of two million dollars. Applicant recognizes that both the EAJA and our implementing regulations limit recovery under that Act to individuals with a net worth of no more than two million dollars.<sup>3</sup> He argues, however, that this restriction is unconstitutional and denies him equal protection of the law.

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<sup>2</sup> In that enforcement action the Administrator sought to revoke applicant's pilot certificate on an emergency basis, citing two incidents of allegedly improper low flight, in violation of 14 C.F.R. 91.119(a) and (d), and 91.13(a). The law judge affirmed violations of 14 C.F.R. 91.119(d) and 91.13(a) with regard to one incident, but found no violations with regard to the other incident. In Order No. EA-4223 we granted applicant's appeal and denied the Administrator's appeal from the law judge's initial decision, resulting in a complete dismissal of the Administrator's emergency order.

<sup>3</sup> The EAJA provides for recovery by a "prevailing party." 5 U.S.C. 504(a)(1). However, 5 U.S.C. 504(b)(1) states:

For the purposes of this section --

\* \* \*

(B) "party" means a party, as defined in section 551(3) of this title, who is (i) an individual whose net worth did not exceed \$2,000,000 at the time the adversary adjudication was initiated, . . .

\* \* \*

Similarly, our regulations implementing the EAJA specify that an eligible applicant is "[a]n individual with a net worth of not more than \$2 million." 49 C.F.R. 826.4(b)(1).

We have no authority to ignore the terms of the EAJA, or to declare that statute unconstitutional. The EAJA's net worth restriction is a threshold requirement which clearly prohibits applicant from recovering attorney fees and expenses under that Act. Accordingly, we affirm the law judge's dismissal of the application on that basis. We express no view in this decision as to whether the Administrator's position in this case was substantially justified, or as to whether applicant's request for fees and expenses was otherwise proper under the EAJA.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Applicant's appeal is denied; and
2. The order dismissing applicant's EAJA application is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.